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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS,
LLC,

USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED
FUND, LLC,¹

USA SECURITIES, LLC,²

Debtors.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR¹
Case No. BK-S-06-10729-LBR²

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

**OBJECTION OF USACM TRUST TO
PROOFS OF CLAIM BASED IN
WHOLE OR IN PART, UPON
INVESTMENT IN PRESERVE AT
GALLERIA LOAN; AND
CERTIFICATE OF SERVICE**

Date of Hearing: February 5, 2010
Time of Hearing: 9:30 a.m.

The USACM Liquidating Trust (the "USACM Trust") moves under § 502 of title 11 of the United States Bankruptcy Code (the "Bankruptcy Code") and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for an order disallowing the Proof of Claim filed by individual investors ("Direct Lenders") against USA

¹ This bankruptcy case was closed on October 12, 2007.

² This bankruptcy case was closed on December 26, 2007.

1 Commercial Mortgage Company (“USACM”) to the extent such claims are based, in
2 whole or in part, upon an investment in the Preserve At Galleria Loan (the “Preserve At
3 Galleria Loan”). This Objection is supported by the Court’s record and the Declaration of
4 Edward M. Burr in Support of Omnibus Objections to Proofs of Claim Based Upon the
5 Investment in Preserve at Galleria Loan filed with the Court on December 3, 2008 [DE
6 6643] (the “Burr Decl.”).

7 **I. INTRODUCTION**

8 On June 15, 2006, the borrower paid off the Preserve At Galleria Loan in full. In
9 turn, USACM distributed the proceeds to the Direct Lenders who were paid in full, subject
10 to servicing fees and any other charges under their respective Loan Servicing Agreements
11 and this Court’s orders, including the Confirmation Order. This Objection seeks an order
12 from the Court disallowing Direct Lender claims to the extent they are based upon an
13 investment in the Preserve At Galleria Loan. To the extent a Direct Lender claim is based
14 upon an investment in a different loan, it will not be impacted by this Objection.

15 **II. JURISDICTION**

16 The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and
17 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core
18 proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

19 The statutory predicate for the relief requested herein are 11 U.S.C. § 502 and
20 Bankruptcy Rule 3007.

21 **III. BACKGROUND**

22 On April 13, 2006 (“Petition Date”), USACM, USA Securities, LLC (“USA
23 Securities”), USA Capital Realty Advisors, LLC (“USA Realty”), USA Capital
24 Diversified Trust Deed Fund, LLC (“DTDF”), USA Capital First Trust Deed Fund, LLC
25 (“FTDF,” together with DTDF, the “Funds”) (collectively, the “Debtors”), filed voluntary
26 petitions for relief under chapter 11 of the Bankruptcy Code. Debtors continued to operate

1 their businesses, if any, as debtors-in-possession pursuant to sections 1107(a) and 1108 of
2 the Bankruptcy Code. Debtors' post-petition management of the Debtors was under the
3 direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC
4 ("Mesirow"), who served as the Chief Restructuring Officer.

5 USACM was a Nevada corporation that, prior to the Petition Date, was in the
6 business of underwriting, originating, brokering, funding and servicing commercial loans
7 primarily secured by real estate, both on behalf of investors and for its own account. That
8 business included the solicitation of individual investors to purchase fractional interest in
9 loans that USACM originated and then serviced. These investors, totaling approximately
10 3,600 as of the Petition Date, are referred to as "Direct Lenders" in USACM's bankruptcy
11 case and in this Objection. Although USACM serviced and sometimes originated the
12 loans in which the Direct Lenders invested, generally USACM was not a borrower on
13 these loans.

14 On January 8, 2007, this Court entered its Order Confirming the "Debtors' Third
15 Amended Joint Chapter 11 Plan of Reorganization" as Modified Herein [Docket No.
16 2376] (the "Confirmation Order"). Under the Plan, the USACM Trust is the successor to
17 USACM with respect to standing to seek allowance and disallowance of Claims. The
18 USACM Trust exists as of the Effective Date of the Plan, which was March 12, 2007.
19 Geoffrey L. Berman is the Trustee.

20 The spreadsheet attached as **Exhibit A** lists Proofs of Claim filed by Direct Lenders
21 that appear to be based, in whole or in part, upon an investment in the Preserve At Galleria
22 Loan. **Exhibit A** shows the Proof of Claim number, the claimant, the claimant's address,
23 the total amount of the claim and the total amount of the claim that appears to be related to
24 an investment in the Preserve At Galleria Loan based upon the information provided by
25 the claimant. The claims listed in **Exhibit A** are referred to hereafter as the Preserve At
26

1 Galleria Claims. A copy of the first page of the proof(s) of claim listed on **Exhibit A** is
2 attached as **Exhibit B**.

3 On or about June 15, 2006, the Preserve At Galleria Loan was paid off in full, as
4 reflected in USACM's books and records. (Burr Decl. ¶ 8.) Shortly thereafter, USACM
5 processed the payoff and distributed the proceeds to the Direct Lenders on the Preserve At
6 Galleria Loan. *Id.* The Direct Lenders were in turn paid in full for their investment in the
7 Preserve At Galleria Loan, subject to servicing fees and any other charges under their
8 respective Loan Servicing Agreements and this Court's orders, including the Confirmation
9 Order. (Burr Decl. ¶ 9.) In general, the Direct Lenders received their principal and
10 interest on the Preserve At Galleria Loan, less sums withheld for servicing fees, servicer
11 advances, Prepaid Interest and sums known as the 2% Holdback pursuant to the confirmed
12 Plan. *Id.* On the Effective Date of the Plan, the Prepaid Interest was applied, a portion of
13 the 2% Holdback was applied to the allowed claims of the Direct Lender Committee, and
14 the balance paid to the Direct Lenders. *Id.* Accordingly, the USACM Trust no longer has
15 further obligations to the Direct Lenders arising out of the Preserve At Galleria Loan.
16 (Burr Decl. ¶ 10.)

17 **IV. OBJECTION**

18 Under the Bankruptcy Code, any Claim for which a proof of claim has been filed
19 will be allowed unless a party in interest objects. If a party in interest objects to the proof
20 of claim, the Court, after notice and hearing, shall determine the amount of the Claim and
21 shall allow the Claim except to the extent that the Claim is "unenforceable against the
22 debtor . . . under any . . . applicable law for a reason other than because such claim is
23 contingent or unmatured." 11 U.S.C. § 502(b). The USACM Trust is entitled to object to
24 proofs of claim under 11 U.S.C. § 502(a). This objection is timely under the confirmed
25
26

1 Plan, as the deadline for such objections has been extended to February 5, 2010, by this
2 Court's orders.

3 The USACM Trust objects to the Preserve At Galleria Claim and requests that the
4 Court disallow the claims listed in **Exhibit A** to the extent those claims are based upon a
5 Direct Lender investment in the Preserve At Galleria Loan because the Direct Lenders
6 were paid in full on their investments in Preserve At Galleria Loan. The USACM Trust
7 asks that the Court sustain this objection and grant such other and further relief as is just
8 and proper.

9 Dated: January 8, 2010.

10 LEWIS AND ROCA LLP

11
12 By /s/ John C. Hinderaker

13 Rob Charles, NV 6593

14 John C. Hinderaker, AZ 18024 (*pro hac vice*)
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17 Copy of the foregoing and pertinent
18 Portion of Exhibit A and Exhibit B
19 mailed by first class
Postage prepaid U.S. mail
On January 8, 2010 to:

20 All parties in interest listed on
21 Exhibit A attached

22 /s/ Leilani Lista
23 Leilani Lista

24 Lewis and Roca LLP
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